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Attorneys at Law

July 18, 2017

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Certified Mail Receipt
No. 9414 7266 9904 2956 4605 37

Owner/Managing Agent
Liberty Industrial Park of Buford, LLC
5100 Peachtree Parkway
Suite 200
Norcross, GA 30092

Certified Mail Receipt
No. 9414 7266 9904 2956 4605 44

Mr. Edward R. Breedlove
521 Level Creek Road
Sugar Hill, GA 30518

Re: **Notice of Intent to Sue under Section 505
of the Clean Water Act, 33 U.S.C. § 1365**

Dear Sirs:

This firm represents Chattahoochee Riverkeeper, Inc. ("CRK") in matters relating to Gwinnett Co. Parcel I.D. # R7304 007 located on Peachtree Industrial Boulevard between GA Highway 20 and Little Mill Road (the "P.I.B. Borrow Site"). According to Gwinnett County property records, Liberty Industrial Park of Buford, LLC ("Liberty Industrial") is the current owner of the P.I.B. Borrow Site and Edward R. Breedlove ("Mr. Breedlove") was the owner of the Site from November 14, 2012 until May 16, 2017.

The purpose of this letter is to inform you that CRK intends to bring a citizen suit 60 days from the date of this letter under section 505 of the federal Clean Water Act ("CWA") and the Georgia Water Quality Control Act ("GWQCA") against Liberty Industrial and Mr. Breedlove for the unlawful discharge of pollutants and the other violations described below. The lawsuit will seek injunctive relief, civil penalties, attorneys' fees and expenses of litigation, for violations of the CWA and the GWQCA.

As you may be aware, CRK is a nonprofit corporation with more than 7,000 members and with its primary office in Atlanta, Georgia. CRK's mission is to advocate and secure the protection and stewardship of the Chattahoochee River and its tributaries and watershed, in order to restore and conserve their ecological health for the people, fish and wildlife that depend on the river system. The P.I.B. Borrow Site discharges to an unnamed tributary to Richland Creek,



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which is a tributary to the Chattahoochee River. CRK members recreate and fish in, on, and near Richland Creek and the Chattahoochee River downstream of the discharge—in addition, Richland Creek enters the Chattahoochee River in the National Park Service's Chattahoochee River National Recreation Area, which is utilized by millions of individuals each year for fishing, swimming, and boating. The quality of the Chattahoochee River and its tributaries directly affects the recreational, aesthetic and environmental interests of CRK's members.

The violations in question arise out of the unlawful discharge of pollutants and pollutant-laden storm water from the P.I.B. Borrow Site into an unnamed tributary to Richland Creek, and ultimately Richland Creek and the Chattahoochee River. The Chattahoochee River and Richland Creek and its tributary are waters of the State of Georgia for purposes of the GWQCA, and waters of the United States for purposes of the CWA.

The following violations of the CWA have occurred and continue to occur as a result of the activities at the P.I.B. Borrow Site.

Section 1311 of the CWA states “[e]xcept as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C. § 1311(a). Section 1342 of the CWA makes it unlawful for any person to discharge from a point source without a National Pollutant Discharge Elimination System (“NPDES”) permit. On August 13, 2003, the General NPDES Permit for Discharges of Storm Water from Construction Activities for Common Developments, GAR100003 (the “General Permit”) was issued in Georgia. The General Permit has been reissued on multiple occasions since that time and requires property owners engaging in activities resulting in land disturbance equal to or greater than one acre to file a notice of intent at least 14 days prior to commencement of such activities and comply with the provisions of the Permit.

The P.I.B. Borrow Site is over 56 acres in size, is apparently being developed (at least in part) for an “Industrial/warehouse Business Park,” and land-disturbing activities began at the Site during the ownership of Mr. Breedlove and have continued during the ownership of Liberty Industrial. As rain falls on exposed soils, erosion and sedimentation occurs and results in the discharge of storm water laden with sediment, sand, dirt, rock and other pollutants into nearby waters. As an example, representatives of CRK witnessed the discharge of sediment-laden storm water associated with land-disturbing activities from the P.I.B. Borrow Site to the unnamed tributary to Richland Creek on June 21, 22, and 29, and July 6, 2017, and similar discharges of pollutant-laden storm water have occurred, and will continue to occur, each time that it rains.

In February 2014, a notice of intent (“NOI”) was filed by “Buford Borrow Site, LLC” seeking coverage under the General Permit to discharge storm water from land-disturbing activities at the P.I.B. Borrow Site. However, according to Gwinnett County property records,

Buford Borrow Site, LLC has never been the owner of the Site. Moreover, the February 2014 NOI incorrectly states, among other things, that the Site does not discharge within one linear mile upstream of any portion of an Impaired Stream Segment. (February 2014 NOI at § III.E). Contrary to that false statement, the Site's discharge to an unnamed tributary of Richland Creek is approximately 1,500 feet (i.e., well within a linear mile) of Richland Creek, which is listed on Georgia's 305(b)/303(d) Impaired Streams list for "Biota-Fish" as a result of excess sedimentation from runoff.

Therefore, the February 2014 NOI is deficient under Parts II.B.1.b & e of the General Permit and does not otherwise meet the requirements of Part II to obtain authorization to discharge under the General Permit. Thus, the continuing discharge of pollutants in storm water from land-disturbing activities at the P.I.B. Borrow Site violates 33 U.S.C. § 1311. The discharges are ongoing and unlawful under the CWA, 33 U.S.C. § 1311, the GWQCA, O.C.G.A. § 12-5-21 *et seq.*, and federal and state regulations.

CRK has also observed multiple, additional legal violations at the P.I.B. Borrow Site, including but not limited to (i) insufficient installation of sediment basins and the failure to properly design, install, and maintain adequate control measures, including best management practices ("BMPs"), as required by Parts III.D and IV.D.3 of the General Permit; (ii) disturbed areas that are not properly stabilized and covered as required by Part IV.D.3 of the General Permit and the GWQCA and the Georgia Erosion and Sedimentation Control Act; and (iii) the failure to failing to design, install, and maintain the additional best management practices required in Part III.C.2 of the Permit because Richland Creek is listed on Georgia's 305(b)/303(d) Impaired Streams list for "Biota-Fish" as a result of excess sedimentation from runoff.

These violations have resulted and are continuing to result in the pollution and degradation of Richland Creek and its unnamed tributary. The sediment-laden runoff from the P.I.B. Borrow Site is further causing and contributing to the water quality violation and impairment in Richland Creek, and the turbid discharge from the P.I.B. Borrow Site is also causing and contributing to a violation of Georgia's narrative water quality standards, DNR Rules 391-3-6-03(5)(c) & (d), as incorporated into Part I.C.4 of the General Permit. *See* DNR Rule 391-3-6-03(5)(c) ("All waters shall be free from material related to municipal, industrial or other discharges which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses"); DNR Rule 391-3-6-03(5)(d) ("All waters shall be free from turbidity which results in a substantial visual contrast in a water body due to man-made activity").

Moreover, you have failed to comply with numerous requirements of the General Permit in regard to the land-disturbing activities at the P.I.B. Borrow Site. Your continuing and ongoing violations of the General Permit include but are not limited to the following: (1) the failure to

prepare a sufficient Erosion, Sedimentation and Pollution Control Plan ("ESPCP") in accordance with Part IV of the General Permit; (2) the failure to conduct turbidity sampling and monitoring in accordance with Part IV.D.6 of the General Permit; (3) the failure to provide monitoring reports and additional reporting to EPD in accordance with Part IV.E of the General Permit; (4) the failure to conduct inspections of the Site in accordance with Part IV.D.4 of the General Permit; (5) the failure to retain records in accordance with Part IV.F of the General Permit; and (6) the failure to document and report violations of the General Permit to EPD in accordance with Part V.A.2. Such violations are ongoing and unlawful under the CWA, 33 U.S.C. § 1311, the GWQCA, O.C.G.A. § 12-5-21 *et seq.*, and federal and state regulations.

All of the above-described actions constitute continuing violations of sections 301 and 402 of the CWA and are therefore actionable under the citizen suit provision of the CWA. The violations are ongoing as of the date of this letter. The discharges have had, and continue to have, a direct and adverse effect on the unnamed tributary to Richland Creek, Richland Creek itself, and the Chattahoochee River, and have interfered with the use and enjoyment of such waters by CRK's members. Sediment and other pollutants discharged from the Site remain in the unnamed tributary to Richland Creek and the continuing presence of the illegally discharged sediment in such water body constitutes a continuing violation under the CWA.

Please be advised that, under section 309(d) of the CWA, 33 U.S.C. § 1319(d), each of the above-described violations subjects you to a penalty of up to \$51,570 per day for each day of violation. 40 C.F.R. § 19.4; 81 Fed. Reg. 43091 (July 1, 2016). In addition to civil penalties, CRK will seek injunctive relief to prevent further violations, and under section 505(d) of the CWA, 33 U.S.C. § 1365(d), a plaintiff prevailing in a citizen suit is able to recover its attorney's fees and expenses of litigation.

In keeping with the requirements of federal regulations, you are hereby notified that the full address and phone number of CRK are as follows:

Jason Ulseth
Chattahoochee Riverkeeper, Inc.
3 Puritan Mill
916 Joseph Lowery Blvd, N.W.
Atlanta, Georgia 30318
(404) 352-9828

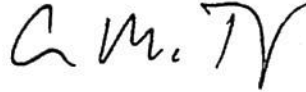
CRK can be reached by calling the undersigned at 404-815-3701, or writing the undersigned at Promenade, Suite 3100, 1230 Peachtree Street, N.E., Atlanta, Georgia 30309.

As this is a matter of the utmost seriousness, we urge you to give it your immediate attention.

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Sincerely yours,

SMITH, GAMBRELL & RUSSELL, LLP



Andrew M. Thompson

cc: John P. Cheeley, Registered Agent
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Atlanta, Georgia 30334
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Scott Pruitt, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
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V. Anne Heard, Acting Regional Administrator
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